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the correctness of the decree appealed from, and to satisfy the court on appeal that there was error to his prejudice.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1771, 3670; Dec. Dig. § 901.\* 1 Va.-W. Va. Enc. Dig. 609.]

Appeal from Circuit Court, Bedford County.

Suit by John A. Witt against W. I. Creasey. From a decree for defendant, complainant appeals. Affirmed.

*William Eubank*, of Bedford City, for appellant.

*Landon Lowry*, of Bedford City, for appellee.

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WOOD et al. v. PHILLIPS.

Sept. 9, 1915.

[86 S. E. 101.]

**1. Ejectment (§ 106\*)—Right of Action—Title from Common Source.**—In ejectment where the burden was upon plaintiff claiming under a common source of title to show that the land claimed was within the description of his title papers, his demurrer to defendant's evidence was properly overruled, where reasonable men might differ as to whether the land was included within such description.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 307-310; Dec. Dig. § 106.\* 4 Va.-W. Va. Enc. Dig. 882.]

**2. Trial (§ 156\*)—Demurrer to Evidence—Effect.**—A demurrer to the evidence admits the truth of the evidence of the adverse party and all just inferences therefrom, and waives all the evidence of the demurring party in conflict therewith and all inferences not necessarily resulting therefrom.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.\* 4 Va.-W. Va. Enc. Dig. 522.]

**3. Appeal and Error (§ 1052\*)—Review—Harmless Error.**—The general rule that improper admission of evidence is reversible error is subject to the exception that if there is a demurrer to the evidence, and there is enough evidence to sustain a judgment for the demurred without regard to the illegal evidence, the demurring party cannot avail himself of such error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4171-4177; Dec. Dig. § 1052.\* 4 Va.-W. Va. Enc. Dig. 542.]

Error to Circuit Court, Floyd County.

Action by Edward D. Wood and others against James R. Phillips, in ejectment. Judgment for defendant, and plaintiffs bring error. Affirmed.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

*W. B. Kegley*, of Wytheville, *R. I. Roop*, of Christiansburg, and *J. E. Proffit*, of Floyd, for plaintiffs in error.

*C. B. & H. M. Moonave*, of Roanoke, and *R. F. Tompkins*, *G. W. Agnew, Sowder & Burwell*, and *B. G. Howard*, all of Floyd, for defendant in error.

**WYGAL v. WILDER et al.**

Sept. 9, 1915.

[86 S. E. 97.]

**1. Highways (§ 59\*)—Establishment—Proceedings in Circuit Court.**—The report of viewers in proceedings to establish a road under General Road Law (Acts 1904, c. 106) § 5 (Code 1904, § 944a), as amended by Acts 1910, c. 162, is properly received in evidence in the circuit court, though the matter is there heard de novo.

[Ed. Note.—For other cases, see Highways, Cent. Dig. § 199; Dec. Dig. § 59.\* 12 Va.-W. Va. Enc. Dig. 864.]

**2. Highways (§ 58\*)—Establishment—Proceedings in Circuit Court—Evidence.**—The admission in evidence in proceedings in the circuit court for the establishment of a public road under General Road Law, § 5, as amended by Acts 1910, c. 162, that the applicants for the road would grade and construct it at their own expense, was not prejudicial to a landowner.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 177-198, 200-203; Dec. Dig. § 58.\* 12 Va.-W. Va. Enc. Dig. 873.]

**3. Highways (§ 59\*)—Establishment—Proceedings in Circuit Court—Evidence.**—The judgment of the board of supervisors establishing a public road in proceedings therefor is a part of the transcript of the record certified up to the circuit court, and it is not error to allow the judgment to be read to the jury in the circuit court.

[Ed. Note.—For other cases, see Highways, Cent. Dig. § 199; Dec. Dig. § 59.\* 12 Va.-W. Va. Enc. Dig. 864.]

**4. Highways (§ 53\*)—Establishment—Cost of Construction—Obligation of Applicants.**—Where applicants for the establishment of a public road are willing and able to pay for the cost of constructing it, the board of supervisors may allow them to do so.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 155-164; Dec. Dig. § 53.\* 12 Va.-W. Va. Enc. Dig. 872.]

**5. Trial (§ 260\*)—Instructions—Refusal of Instructions Covered by Charge Given.**—It is not error to refuse a requested instruction substantially covered by instructions given.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.\* 7 Va.-W. Va. Enc. Dig. 745.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.